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REMARKS/ARGUMENTS

Claims 1-7 remain pending in the application.  
Reconsideration of the pending claims in view of the remarks below is respectfully requested.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,750,177 of Yee et al. (herein the '177 patent).

The Examiner admits that the specific ratio of whey protein to casein protein disclosed in the '177 patent differs from the whey protein to casein protein taught in the pending application.<sup>1</sup> Specifically, the highest ratio of whey protein to casein protein contained in the cheese product of the '177 patent is 1:4, which is the same ratio of whey protein to casein protein naturally occurring in milk.<sup>2</sup> The pending application, however, teaches a "process cheese comprising casein and whey protein with a ratio of about 50:50 to about 75:25" (i.e. 1:1 to about 3:1).<sup>3</sup> The cheese product of the pending application, therefore, contains a significantly higher ratio of whey protein to casein protein than disclosed in the '177 patent.

The Examiner asserts that, "[i]t would have been obvious ... to adjust the whey to casein ratio as taught by Yee et al and as is claimed because the manipulation of the casein to

<sup>1</sup> See the OA mailed 7/13/2005, page 2

<sup>2</sup> See the '177 patent at column 1, lines 14-15 and claim 12

<sup>3</sup> See the pending application at claim 1

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they ratio is well-known in the art."<sup>4</sup> Applicants respectfully disagree. It would not have been obvious because the process set forth in the '177 patent utilizes ultrafiltration (UF) to retain whey proteins and casein proteins as naturally occurring in milk. As specified in the '177 patent, "[m]ilk has a whey proteins to casein ratio of about 1:4."<sup>5</sup> As is known, UF will concentrate both whey proteins and casein proteins; however, the ratio of whey proteins to casein proteins does not change as a result of the UF process. The '177 patent explains, "[t]he selective concentration of milk results in the formation of a retentate that contains both casein and whey proteins, in the same ratio as in the milk."<sup>6</sup> Because the '177 patent process uses UF to retain whey proteins AND casein proteins from milk, the ratio of whey proteins to casein proteins can never be higher than the natural ratio of milk in a cheese product (i.e. 1:4) produced by the process of the '177 patent. Thus, not only would it be unobvious to adjust the ratio of casein to whey in the '177 patent to 1:3, it would be impossible using the process described therein.

Furthermore, the Examiner has failed to make a *prima facie* case of obviousness based on the '177 patent. The Examiner suggests that it is the Applicants' duty to show evidence contradicting a *prima facie* case of obviousness.<sup>7</sup> On the contrary, as is well established law, the Examiner must initially "present a convincing line of reasoning as to why the artisan would have found the claimed invention to have

<sup>4</sup> See the OA mailed 7/13/2005, page 2. Applicants note that the Examiner has not pointed to any art showing that such manipulation is well-known.

<sup>5</sup> See the '177 patent at column 1, lines 14-15

<sup>6</sup> See the '177 patent at column 1, lines 32-35

<sup>7</sup> See the OA mailed 7/13/2005, page 2

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been obvious in light of the teachings of the references."<sup>8</sup>  
The Examiner has provided no evidence showing a motivation to alter the '177 patent's process to obtain the claimed invention.

Not only does the '177 patent fail to show a motivation to alter the '177 patent's process, but the '177 patent teaches away from Applicants' claimed invention. The pending application teaches a process cheese and a method of preparing a process cheese comprising concentrated whey proteins which are added to the pre-cheese dairy emulsion.<sup>9</sup> The '177 patent teaches away from the use of such concentrated whey protein:

[f]or various reasons, such as government food laws and functional characteristics, whey proteins recovered from whey are not used to any significant extent in commercial processes for making conventional natural cheese or pasteurized process cheese.<sup>10</sup>

Thus, the '177 patent teaches away from the use of concentrated whey proteins in the production of a cheese product.

Therefore, Applicants' respectfully request the withdrawal of the rejection under 35 U.S.C. § 103(a) to claims 1-7 because it is unobvious and impossible to modify the disclosure of Yee et al. to produce the invention claimed in the pending application. Furthermore, Yee et al. teaches away from the invention claimed in the pending application.

<sup>8</sup> Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

<sup>9</sup> See the pending application at page 6, line 17 to page 7, line 14

<sup>10</sup> See the '177 patent at column 1, lines 19-24

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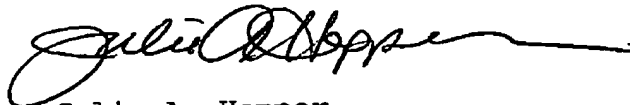
**CONCLUSION**

By way of the remarks provided herein Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard Kaba at (312)577-7000 so that such issues may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fees which may be required by Applicants to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY



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